United States House of Representatives
Committee on Financial Services
Subcommittee on Consumer Protection and Financial Institutions

Hearing on: "Ending Debt Traps in the Payday and Small Dollar Credit Industry"

Written Testimony of

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April 30, 2019

Chair Meeks, Ranking Member Luetkemeyer, and members of the committee, it is an honor to appear today. Thank you for the opportunity to share some thoughts on the high-cost financial debt traps harming so many Americans and the opportunities for Congress to improve consumer protections for our country. My name is Christopher Peterson and I am the John J. Flynn Endowed Professor of Law at the University of Utah where I teach classes on contract law and consumer protection in Salt Lake City. I also serve as a senior fellow and the director of financial services at the Consumer Federation of America in Washington, D.C. The Consumer Federation of America ("CFA") is an association of non-profit consumer organizations headquartered in Washington, D.C. that works to advance the consumer interest through research, advocacy, and education. Over 250 non-profit consumer rights organizations, cooperatives, and credit unions from around the country are members of CFA. I commend the members of this Committee for holding this hearing and for providing an opportunity to discuss these important and timely national issues.

From 2012 to 2016, I worked in a number of different capacities for the federal Consumer Financial Protection Bureau. From 2012 to 2014, I served as Senior Counsel for Enforcement Policy and Strategy in the CFPB's Office of Enforcement. In this role I led issue teams focused on identifying violations of federal consumer protection law and designing law enforcement investigations related to payday, vehicle title and other similar small dollar loans, retail finance, deposit accounts, payment systems, and related financial services. I also served as a regional liaison between the CFPB's Office of Enforcement and state enforcement and regulatory agencies throughout the Western United States. From 2014 to 2016, I served as a Special Advisor in the Office of the Director of the CFPB where I advised Director Richard Cordray on legal and policy issues. In this time period I also worked temporarily at the Pentagon as a Special Advisor in the United States Department of Defense General Counsel's Office of Legal Policy within Office of Personnel and Readiness. In that capacity, I assisted the Pentagon in designing the Military Lending Act regulations that provide a national usury limit on loans to active duty military service members.

I have been asked to testify on payday loans, vehicle title loans and similar forms of high-cost credit, as well as the challenges and opportunities America faces in protecting borrowers in this market. My testimony will: (1) explain how triple-digit interest rates common in the payday and vehicle title lending markets are a historical anomaly; (2) describe how triple-digit interest rate loans capture struggling borrowers in a harmful debt trap; (3) point out many better alternatives to triple-digit interest rate loans; (4) discuss how the Trump administration is retreating from providing necessary consumer protections in this market; and (5) encourage Congress to protect consumers by expanding the Military Lending Act's 36 percent usury limit to protect all Americans.

I. The Triple-Digit Interest Rates Common in the Payday Lending Market are a Dangerous Historical Anomaly

Throughout the United States, the average effective interest rates on payday loans and similar forms of installment credit are approximately 400 percent at store-front locations[1] and about 650 percent in online web-based loans.[2] From a long-term historical perspective, consumer loans at prices this high are anomalous and dangerously expensive. For most of American history payday loan products were considered usurious and would have constituted a crime in many states. For example, Table 1 illustrates that all thirteen original states had aggressive price regulation of consumer loans with simple nominal annual interest rate caps of between five and eight percent.

Table 1. State Usury Limits at Independence.

State	Max. annual rate	Year adopted
Connecticut	6%	1718
Delaware	6%	1759
Georgia	8%	1759
Maryland	6%[a]	1692
Massachusetts	8%	1641
N. Hampshire	6%	1791[b]
N. Jersey	7%	1738
N. York	7%	1737
N. Carolina	6%	1741
Pennsylvania	6%	1700
Rhode Island	6%	1767
S. Carolina	8%	1748
Virginia	5%	1734

[a]Loans payable in tobacco or other property were capped at 8%.
[b]N.H. adopted its first usury statute after independence.
Source: Tyler on Usury (1878).

Every signatory to the Declaration of Independence and delegate to the Constitutional Convention returned to states where a consensus existed regarding the need to protect citizens from high cost loans. American leaders and the public were skeptical of high interest rate loans because of the potential for reducing citizens to poverty as well as their moral view, rooted in their Christian faith, that the taking of excessive interest is a grave sin.[3]

[1] Consumer Financial Protection Bureau, *What is a payday loan?* (June 2, 2017), https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/.
[2] Pew Charitable Trusts, *Fraud and Abuse online: Harmful Practices in Internet Payday Lending* 3 (October 2014), http://www.pewtrusts.org/~/media/assets/2014/10/payday-lending-report/fraud_and_abuse_online_harmful_practices_in_internet_payday_lending.pdf.
[3] About a dozen Biblical passages suggest that usurious lending, especially to the poor, is a grave sin. For example, the first reference to usury in the Bible states: "If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury." Exodus 22:25 (King James). See also Ezekiel, 18:8-17; Ezekiel 22:16-22; Jeremiah, 15:10; John 2:14-15; Leviticus, 25:35-37; Luke 6:33-35; Mathew 5:42; Neh. 5:1-13; Proverbs 28: 6-9;

At the beginning of the twentieth century state legislatures began relaxing interest rate regulation to facilitate more credit availability for consumers. These relaxed usury limits generally took the form of a small loan law which granted licensed lenders special permission to charge interest rates ranging between 18% and 42% per annum with a 36% cap being typical. Laws of this nature remained in force in virtually every state in the union through the 1970s. Individuals and companies that loaned money in excess of these limits were aggressively prosecuted by state and federal criminal investigations. For example, loans made by the New York City *La Cosa Nostra* organized crime families carried average annual interest rates of 250% per annum[4]—nearly half the current average payday loan interest rates in many states. The federal Consumer Credit Protection Act includes a criminal loan sharking law that creates a federal crime for extortionate lending at high interest rates.[5] Under this law, an annual interest rate of more than 45 percent is considered *prima facie* evidence that a loan is extortionate.[6] And during the George W. Bush Administration, Congress adopted a national usury limit on loans to active duty military service members of 36 percent.[7] During all but the last years of the twentieth century, usury limits in this range were the accepted norm in American consumer protection and criminal law.

However, in the past generation, non-bank finance companies became effective at lobbying some state legislatures for new exceptions to traditional consumer credit price limits that far exceed the historical American norm. A handful of states, such as Delaware and Utah, have eliminated interest rate regulation altogether. At the beginning of the 1990s, the best available estimate suggests less than 200 business locations nationwide offered triple-digit interest rate payday or auto-title loans.[8] But because triple-digit interest rate loans have the potential to be very profitable, the industry exploded in the 1990s with exponential growth in the number of locations nationwide. In North Carolina, payday lending outlets roughly quadrupled in four years, growing from 307 in 1997 to 1204 in 2000.[9] Payday and/or auto-title lending outlets quintupled in Salt Lake City between 1994 and 2000.[10] Wyoming payday lenders tripled between 1996 and 1997.[11] Iowa's payday lenders increased from eight to sixty-four in two years.[12] In states where payday lending was once illegal

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Psalm 15: 1, 4-5. The Biblical condemnation of usurious lenders is closely related to the deep and consistent message of the Bible demanding kind and just treatment of poor and vulnerable members of society. Deuteronomy demands "thou shalt not oppress an hired servant that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates." Deut., 24:14. The Bible commands Christians to "[e]xecute true judgment, and shew mercy and compassion every man to his brother; and oppress not the widow, nor the fatherless, the stranger, nor the poor…." Zechariah 7:9-10.

[4] Comment, *Syndicate Loan-Shark Activities and New York's Usury Statute*, 66 Colum. L. Rev. 167, 167 (1966); SELWYN RAAB, FIVE FAMILIES: THE RISE, DECLINE AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 103 (2005).

[5] Consumer Credit Protection Act, Pub. L. No. 90-321, § 202(a), 82 Stat. 146, 15962
(1968) (codified as amended at 18 U.S.C. §§ 891-896 (2010)).

[6] 18 U.S.C. § 892.

[7] 10 U.S.C. § 987

[8] JOHN P. CASKEY, THE ECONOMICS OF PAYDAY LENDING 3 (2002).

[9] OFFICE OF THE COMM'R OF BANKS, REPORT TO THE GENERAL ASSEMBLY OF PAYDAY LENDING, Feb. 22, 2001, at 5.

[10] Christopher L. Peterson, Note, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors*, 2001 Utah L. Rev. 543, 560-61.

[11] Consumer Federation of America, *The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry* 3 (Nov. 1998), *available at* http://www.consumerfed.org/The_Growth_of_Legal_Loan_Sharking_1998.pdf.

[12] *Id.*

under state law, bills purporting to regulate the industry have in fact legitimized it, leading to astonishing growth nearly over night. For instance, after Mississippi began regulating payday lenders in 1998, the number of outlets in that state quickly tripled.[13] By 2001, there were over 12,000 payday loan outlets were operating nationwide.[14] Today there are approximately 16,000 storefront payday lenders around the country.[15] Every year, about 12 million Americans put their financial well-being at risk with payday, vehicle title, and similar forms of high-cost credit. Of these people, 52 percent of are women; 12 percent are African Americans; and 13 percent are struggling through marital separation or divorce.[16] Millions of these consumers have young children.

II. Triple-Digit Interest Rate Loans Capture Struggling Borrowers in a Harmful Debt Trap

Critics of payday and auto-title lending allege that loans with triple digit nominal annual interest rates by their nature can develop into harmful debt traps. Generally speaking, a high-risk debtor facing a cash shortfall in any given day may be unlikely to have corrected their liquidity crisis two weeks later. As payday lending exploded in the 2000s, studies by industry-sponsored think tanks,[17] federal regulators,[18] state regulators,[19] private contractors hired by state governments,[20] consumer

[13] Jimmie E. Gates, *Check-Cashing Businesses Rolling out the Dough*, CLARION LEDGER, Feb. 6, 2005.

[14] *Consumer Federation of America & U.S. Public Interest Research Group, Rent-A-Bank Payday Lending: How Banks Help Payday Lenders Evade State Consumer Protections* 2 (Nov. 2001).

[15] Consumer Financial Protection Bureau, Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54480 (November 17, 2017).

[16] Pew Charitable Trust, Payday Lending in America: Who Borrows, Where They Borrow, and Why." The Pew Charitable Trusts, Accessed November 12, 2018. http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.

[17] Gregory Elliehausen and Edward C. Lawrence, Georgetown University McDonough School of Business Credit Research Center, *Payday Advance Credit in America: An Analysis of Demand* (2001) 39 (about 40 percent of borrowers rolled over more than five times in preceding year, about 20 percent of borrowers who renewed existing loans nine times or more, 10 percent renewed 14 times or more).

[18] United States Office of the Comptroller of the Currency, Fact Sheet: Eagle National Bank Consent Order, January 3, 2002, at 2 (discovering payday loan employee compensation incentives for promoting repeat borrowing); Mark Flannery & Katherine Samolyk, Payday Lending: Do the Costs Justify the Price?, FDIC Center for Financial Research Working Paper No. 2005–09, 16–17 (2005) (high frequency borrowers are more profitable because they generate lower loss ratios and lower operating costs).

[19] Report of the Uniform Consumer Credit Code Rev. Comm. And Action of the Colorado Commission on Consumer Credit 16 (Nov. 4, 1999) (reporting instances of as many as thirteen or more refinances); Chessin, *Borrowing from Peter to Pay Paul: A Statistical Analysis of Colorado's Deferred Deposit Loan Act*, 83 DENVER U. L. REV. 387 (2005) (discussing official Colorado statistics); Ill. Dept. of Fin. Inst., Short Term Lending: Final Report 30 (1999) (average payday loan customer borrows thirteen times per year and remains indebted for at least six months); Indiana Department of Financial Institutions, *Summary of Payday Lender Examination,* 1–2 (77% of payday loans are extensions of previously existing contracts); Survey Iowa Division of Banking (2000) (finding an average of 12.5 loans per customer per year); North Carolina Office of the Commissioner of Banks, Report to the General Assembly on Payday Lending, (87% of borrowers roll over payday loans more than once with each individual lender); Washington State Department of Financial Institution, Payday Lending Report 3 (2003) (over thirty percent of borrowers borrow more than ten times per year, almost ten percent borrow twenty times or more per year).

[20] Veritec Solutions, Florida Trends in Deferred Presentment: State of Florida Deferred Presentment Program, http://www.veritecs.com/FL_trends_sep_2005.pdf (2005) (average Florida customer borrows 7.9 times per year, 25% of borrowers borrow 12 or more times per year); Veritec Solutions, Oklahoma Trends in Deferred Deposit Lending:

advocacy organizations,[21] and academics[22] quickly showed that borrowers of single-payment, triple-digit interest rate loans tend to fall into reoccurring debt patterns. Because these loans carry such high prices, unless lenders use underwriting guidelines to determine borrowers' ability to repay in a timely manner, payday and vehicle title loans typically compound for durations far beyond the initial one- or two-week due date. Looking past the boilerplate terms written into loan contracts, in the absence of effective underwriting, it is economically more accurate to think of auto-title and payday loans as medium-term debts with modest prepayment rates. Across the country, average payday loan borrowers take out eight loans of $375 each per year incurring about $520 on interest.[23] About 75% of all payday loan fees are due to borrowers stuck in more than 10 loans a year.[24] For its part, a large and comprehensive CFPB study found that that over 80% of payday loans are rolled over or followed by another loan within 14 days because borrowers were not able to pay back the loan and make it to their next payday without re-borrowing.[25]

Oklahoma Deferred Deposit Program, http://www.veritcs.com/OK_trends_11_2005.pdf (2005) (average Oklahoma borrower borrows 9.4 times per year and 26.8 percent of borrowers borrowing 12 times or more per year, accounting for about 62 percent of all transactions)

[21] Jean Ann Fox and Ed Mierzwinski, Consumer Federation of America & U.S. Public Interest Research Group, *Show Me the Money: A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures* 8 (2000); Oregon State Public Interest Research Group, Preying on Portlanders: Payday Lending in the City of Portland (2005) (three out of four payday loan borrowers are unable to pay their loan when it comes due).

[22] Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending*, 87 MINN. L. REV. 1, 55–76 (2002); Michael A. Stegman & Robert Faris, *Payday Lending a Business Model that Encourages Chronic Borrowing*, 17 ECON. DEV. Q. 8 (2003).

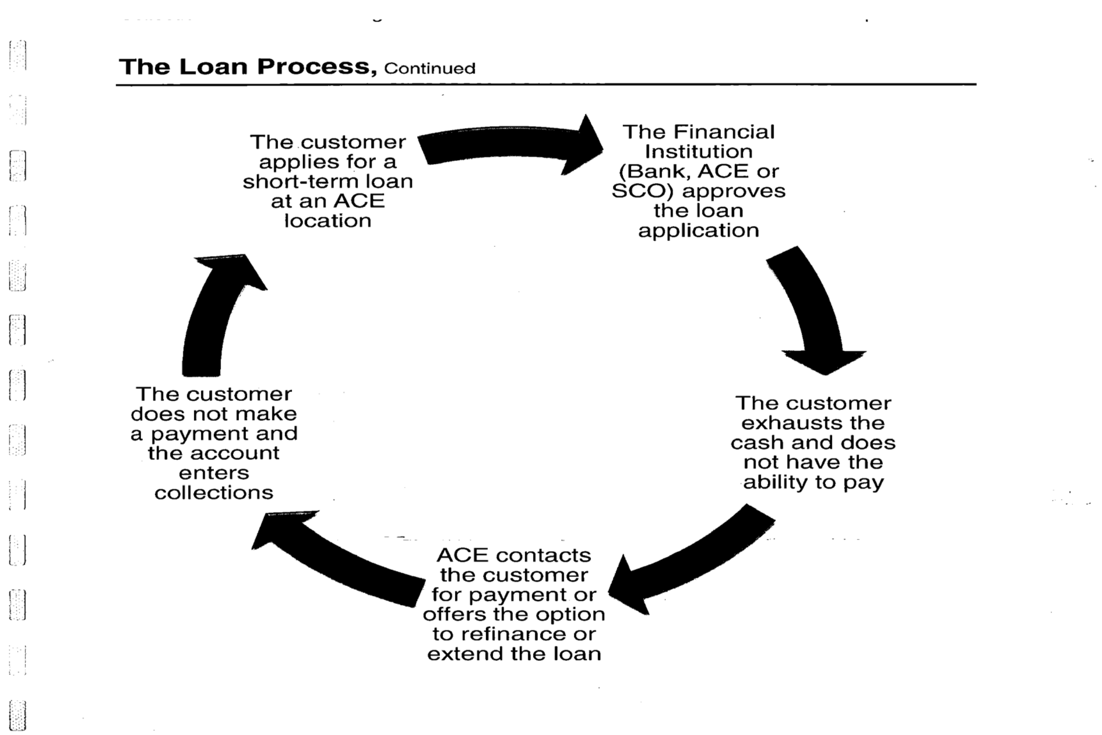
[23] Pew Charitable Trusts, *Payday Lending in America: Who Borrower, Where they Borrow, and Why* 4 (July 2012).

[24] CONSUMER FINANCIAL PROTECTION BUREAU, PAYDAY LOANS AND DEPOSIT ADVANCE PRODUCTS A WHITE PAPER OF INITIAL DATA FINDINGS 22 (April 24, 2013), https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

[25] Consumer Financial Protection Bureau, *CFPB Data Point: Payday Lending* 4 (March 2014).

The CFPB's law enforcement work also revealed that high cost creditors are aware of these patterns and intentionally design their business models to keep low- and moderate-income consumers trapped in debt. For example, one of the largest payday lending industry chains in the country included the following diagram in the manual it used to train its employees. In its "loan process" the business intentionally loaned money at triple digit interest rates to applicants knowing that the customer would "exhaust the cash" and "not have the ability to pay." In "The Loan Process," the customer then enters collections and ultimately borrowers starting the cycle all over again. For many borrowers, this cycle begins anew after the borrower has already repaid nearly as much in fees and interest as they originally borrowed.[26] And, for borrowers in the most dire financial straits, renewal loans are also often for larger amounts than the loans they replace leaving borrowers deeper in debt than when they started.[27]

Figure 1. ACE Cash Express New Hire Training Manual.



For individual consumers, triple digit interest rate loans can create severe financial harm. Figure 2 is a screenshot from the computer records of a national auto title lending chain. The borrower,

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[26] *See* Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty & Discounting: Explaining Patterns of Borrowing, Repayment, and Default* (Aug. 21, 2008) (finding (1) over half of payday borrowers in data sample default on a payday loan within one year of their first such loan, and (2) that defaulting borrowers have on average already repaid or serviced five payday loans, making interest payments of 90% of their original loan's principal); *see also Payday Loans, Inc.*, supra note 6, at 9-10 (finding 37% of payday borrowers in sample experienced default in the first year of borrowing, and 44% experienced default within the first two years of borrowing).

[27] *See Uriah King & Leslie Parrish, Payday Loans, Inc.: Short on Credit, Long on Debt,* CENTER FOR RESPONSIBLE LENDING*,* at 6-8 (March 31, 2011).

whose name I have changed for her privacy, works as a receptionist for $11.00 per hour in Albuquerque, NM and is a proud, enrolled member of the Navajo Nation. When her partner did not receive as many hours at his place of employment, the couple fell behind on their bills. Ms. Begay took out a $1971.05 vehicle title loan with a 300% APR, secured by her lien on her truck. Over the next eight months, Ms. Begay made $4,635 in payments on her loan. Because she was only making $11.00 per hour, coming up with these payments was extraordinarily difficult for Ms. Begay and represented a daily struggle. Yet despite all her efforts, simply because of the extraordinarily high interest rate, the vehicle title lender only applied $1.16 out of her many payments to the loan's principal balance. After all of these months, the lender claimed Ms. Begay still owed $2,422.05—more than the original principal of her loan. When Ms. Begay eventually gave up and stopped paying, the lender engaged in harassing debt collection calls including calls to her place of employment because it interfered with her job. For Ms. Begay, and millions of Americans like her, this 300 percent interest rate loan was a debt trap.

Figure 2. Vehicle Title Lender Account Record Screenshot for Raedell Begay[28]

Date	Transaction	Funds amount	Days late	Principal (before)	Balance (before)	Principal (applied)	Interest (applied)	Fees (applied)	Principal (after)	Balance (after)
04/23/2015	Payment received	$100.00	4	1,971.05	2,538.06	(0.00)	(100.00)	0.00	1,971.05	2,438.06
04/30/2015	Payment received (renewal)	$405.00	11	1,971.05	2,551.46	(0.00)	(405.00)	0.00	1,971.05	2,146.46
05/28/2015	Payment received (renewal)	$500.00	9	1,971.05	2,600.07	(0.00)	(500.00)	0.00	1,971.05	2,100.07
06/23/2015	Payment received (renewal)	$500.00	4	1,971.05	2,521.27	(0.00)	(500.00)	0.00	1,971.05	2,021.27
07/23/2015	Payment received (renewal)	$500.00	4	1,971.05	2,507.28	(0.00)	(500.00)	0.00	1,971.05	2,007.28
09/01/2015	Payment received (renewal)	$480.00	13	1,971.05	2,655.28	(0.00)	(480.00)	0.00	1,971.05	2,175.28
09/22/2015	Payment received	$300.00	3	1,971.05	2,515.49	(0.00)	(300.00)	0.00	1,971.05	2,215.49
09/25/2015	Payment received (renewal)	$200.00	6	1,971.05	2,264.09	(0.00)	(200.00)	0.00	1,971.05	2,064.09
10/22/2015	Payment received	$200.00	3	1,971.05	2,501.50	(0.00)	(200.00)	0.00	1,971.05	2,301.50
10/29/2015	Payment received (renewal)	$445.00	10	1,971.05	2,414.89	(1.16)	(443.84)	0.00	1,969.89	1,969.89
12/14/2015	Payment received (renewal)	$500.00	25	1,969.89	2,714.67	(0.00)	(500.00)	0.00	1,969.89	2,214.66
01/27/2016	Payment received (renewal)	$505.00	39	1,969.89	2,927.05	(0.00)	(505.00)	0.00	1,969.89	2,422.05
Total		$4,635.00				(1.16)	(4,633.84)	0.00		

Moreover, the triple-digit interest rates disclosed to consumers at the outset of a transaction in fact dramatically understate the true costs associated with payday and vehicle title loans. As borrowers fall into a default and reborrowing cycle, they frequently lose the ability to successfully manage their checking accounts causing them to incur overdraft and insufficient funds penalties both on their high cost loan as well as on their other pre-existing obligations.

For Ms. Begay and consumers like her, payday loans, vehicle title loans, and similar forms of high-cost credit tend to be harmful in a variety of ways including:

- **Foregoing basic living expenses.** Consumers who are struggling to repay debts that exceed their ability to repay often forgo basic living expenses like rent, groceries, electricity, and health

[28] Name changed for consumer's privacy.

care as a result of using covered products that were offered without any determination of their ability to repay them.[29]

- **Disruption of relationships with banks and credit unions.** Another CFPB study found that in an 18-month period half of online payday loan borrowers were charged an average of $185 in bank penalties for overdrafts or insufficient funds.[30] These patterns can cause mainstream banks and credit unions to lose confidence in payday loan borrowers causing involuntary checking account closures.[31]

- **Vehicle repossession.** The CFPB's research has found that over one-third of vehicle-title loan borrowers secure loans with their household's only vehicle.[32] Repossession of a borrower's sole means of reliable transportation, as the result of an unaffordable car title loan, adversely affects his or her ability to get to work or school, or perform day-to-day tasks like obtaining food, medicine, or other vital services.[33]

- **Aggressive debt collection.** The payday lending industry has been dogged by allegations of illegal collection practices such as illegal calls, harassment at borrowers' residences or places of work, and false threats of legal action, and misuse of the criminal justice system.[34] The persistence of widespread abusive collection practices is inherent in a business model that makes loans to borrowers who are unable to repay without defaulting on their other obligations or neglecting basic living expenses.

- **Health effects.** Recent public health research increasingly demonstrates a troubling link between unaffordable payday and vehicle-title loans and negative health outcomes. Medical and public health research shows growing evidence that payday loan use is risk factor associated with a variety of poor health outcomes including higher blood pressure, weight gain, inflammation, and

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[29] *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472, 54591 (Nov. 17, 2017) ("borrowers … experience injury when covered short-term loans are made without making a reasonable assessment of their ability to repay and they are unable to cover the loan payment on top of major financial obligations and basic living expenses. These injuries include those associated with default, delinquency, and re-borrowing, as well as the negative collateral consequences of being forced to forgo major financial obligations or basic living expenses to cover the unaffordable loan payment.").

[30] Consumer Financial Protection Bureau, *Online Payday Loan Payments* 3 (April 2016).

[31] Dennis Campbell, Asis Martinez Jerez, and Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures* 32 (June 6, 2008), *available at*: http://ssrn.com/abstract=1335873 or http://dx.doi.org/10.2139/ssrn.1335873 (finding a "positive relationship between the existence of payday lending and involuntary account closures.");

[32] *Id.* at 54574.

[33] *Id.*

[34] *Id. See also See* Melanie Hicken, *In Texas, payday lenders are getting borrowers arrested,* CNN Money (Jan. 8, 2015), https://money.cnn.com/2015/01/08/pf/payday-lenders-texas/ ("Texas Appleseed analyzed more than 1,500 criminal complaints filed by more than a dozen payday lenders between 2012 and mid-2014. Yet it says these are 'just the tip of the iceberg' since it only examined public records from eight of the state's 254 counties."); In addition, a recent report by the ACLU found that collection litigation related to payday and vehicle-title loans have led to borrowers' arrest and imprisonment. AM. C.L. UNION, A POUND OF FLESH: THE CRIMINALIZATION OF PRIVATE DEBT, 33 (2018), https://www.aclu.org/sites/default/files/field_document/022118-debtreport.pdf. This "debt-to-jail pipeline" can result in long-term lost income, psychological trauma, and other harmful effects on consumers and their families. *Id.* at 19. In one case identified by the ACLU, a Missouri borrower was jailed for three days after failing to appear at a collection hearing on a $425 payday loan.

anxiety.[35] One recent study found "a sharp increase in attempted suicides after gaining access to payday loans" that "appear[ed] to be related to mental health deterioration from financial distress."[36]

- **Reborrowing that costs billions of dollars.** The various fees associated with payday and vehicle-title loans cost consumers an estimated $8 billion in fees annually.[37] Nationally, according to the CFPB's own data, 75% of all payday loan fees are due to borrowers stuck in more than 10 loans a year. Delaying the compliance date of the Bureau's rule would lead consumers to pay billions in fees on reborrowing unaffordable payday and vehicle-title loans across the proposed fifteen-month period. Indeed, the CFPB found that 85% of payday loans are reborrowed within 30 days, suggesting the borrower did not have the ability to repay them.[38]

III. There are many Better Alternatives to Payday Loans, Vehicle Title Loans and Similar forms of High-Cost Credit

Payday loans and similar forms of credit crowd out better alternatives that are widely available in states with traditional usury limits. Many consumers in in the small dollar lending market have difficulty comparing prices and terms of credit. This allows many lenders to compete, not by offering the lowest price, favorable qualitative contractual terms, or the best customer service, but instead by charging *higher* prices that support costly investments in expensive storefront branch locations, internet referrals, and advertising. Paradoxically, in markets where consumers have difficulty understanding how long they will be in debt and how much they will ultimately pay, lenders have a strong incentive to charge higher prices in order to promote the salience of their services in comparison to other businesses. The result is that the primary factor controlling credit prices in this market is not competition, but consumer protection law.[39]

Superior alternatives to high-cost payday and vehicle title loans include:

- **Credit cards.** Every credit card in America effectively includes the equivalent of a free payday loan. Credit card borrowers who are not carrying a revolving monthly balance are

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[35] *See,* Elizabeth Sweet, et al., *Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health*, 5 POPULATION HEALTH 114, 114 (2018) ("[W]ithin the broader context of financial debt and health, short-term loans should be considered a specific risk to population health"); Jerzy Eisenberg-Guyot, et al., *From Payday Loans to Pawnshops: Fringe Banking, the Unbanked, and Health*, 37 HEALTH AFFAIRS 429, 433 (2018) ("[P]ast-year fringe loan use was associated with 38 percent higher prevalence of poor or fair health. . . .").

[36] Jaeyoon Lee, *Credit Access and Household Well-being: Evidence from Payday Lending* (January 1, 2019). Available at SSRN: https://ssrn.com/abstract=2915197 or http://dx.doi.org/10.2139/ssrn.2915197.

[37] DIANE STANDAERT AND DELVIN DAVIS, CENTER FOR RESPONSIBLE LENDING, PAYDAY AND CAR TITLE LENDERS DRAIN $8 BILLION IN FEES EVERY YEAR, 1 (2016), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_statebystate_fee_drain_may2016_0.pdf.

[38] CFPB, SUPPLEMENTAL FINDINGS ON PAYDAY, PAYDAY INSTALLMENT, AND VEHICLE TITLE LOANS, AND DEPOSIT ADVANCE PRODUCTS, 111 (June 2016).

[39] Pew Charitable Trusts, *How State Rate Limits Affect Payday Loan Prices* (April 2014), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf (study of payday loan prices in 36 states showing "a state's limit on interest rates is the key factor driving loan pricing. . . . in states with higher or no interest rate limits, the same companies charge comparable borrowers far more for essentially the same small-loan product.").

entitled to a no-cost grace period each month. Many banks and credit unions offer credit cards especially designed to work for subprime borrowers with poor and very poor credit histories. While shopping for a new credit card takes more time than applying for a payday loan, even many subprime credit cards are a far more inexpensive, safer product.

- **Federal credit union Payday Alternative Loans.** Many federal credit unions offer "PAL" loans with interest rates of 28% and an application fee to compete with triple digit interest rate payday loans. These are relatively inexpensive, safe products that are widely available to borrowers who invest the time in developing a banking relationship with a federal credit union.

- **Finance company installment loans.** Some finance companies specialize in making loans with interest rates below 36% to subprime borrowers. Although some of these companies have significant consumer protection challenges, nevertheless, subprime finance company installment loans are usually much cheaper than debt-trap payday and vehicle title loans.

- **Charitable community and poverty assistance organizations.** America is blessed with a diverse and robust non-profit sector that provides many subsidized and charitable payday loan alternatives. Many faith organizations, local governments, and charities have programs specifically designed to help consumers who are facing an emergency. The financial advice website Nerdwallet.com is currently maintaining lists dozen charitable organizations providing payday loan alternatives in many areas around the country.[40]

- **Payroll Access Services.** A growing number of employers provide active payroll access services to protect their employees from predatory payday loans. Some employers provide the services directly through their payroll department while others outsource these advances to a technology company. For example, Oakland-based Even provides payroll advances to 1.4 million employees of Walmart. Under this arrangement the Walmart employees can obtain a portion of their accrued wages eight times a year free of charge. The workers can pay a relatively inexpensive flat fee if they want more than eight payroll advances per year.[41]

- **Negotiated forbearance agreements with landlords, merchants, utilities and other creditors.** Many lenders and loan servicers understand that borrowers running to payday lenders can make repayment of a home mortgage or auto loan less likely. Loan servicers in some cases have the authority to negotiate forbearance agreements that are typically cheaper than a payday loan and similar forms of credit. Many landlords, merchants and utilities will also work with struggling borrowers to accommodate delayed repayment for free or at lower prices than payday and car title lenders, or can make referrals to reputable local charities.

[40] Payday Loans: Find Better Alternatives, Nerdwallet.com (March 27, 2019) https://www.nerdwallet.com/blog/loans/payday-loans/.

[41] Michael Corkery, *Walmart Will Let Its 1.4 Million Workers Take their Pay Before Payday*, N.Y. TIMES, Dec.13, 2017, https://www.nytimes.com/2017/12/13/business/walmart-workers-pay-advances.html.

- **Pawnshops.** Although pawn credit is expensive, it is still a better alternative than triple-digit interest rate payday and car-title debt traps. In bona fide pawn loans, borrowers preplan their exit from the debt. Borrowers select an item of personal property to serve as collateral and forfeit the item they themselves chose if they cannot repay. Pawn credit tends to nudge borrowers toward savings by forcing them to relinquish something of value prior to borrowing. Principle balances tend to be more manageable for lower-income consumers than those in payday and car title loans. And, pawn loans are widely available in every state and have maintained a moderately profitable business model for thousands of years.

- **Assistance from friends or family.** Not everyone has family or friends to turn to in times of need. But many people do. Payday loan borrowers are better off turning to friends or family before a payday loan turns a tough financial situation into a crisis. Indeed many borrowers are forced to turn to friends and family to help them escape from payday or vehicle title lenders, but need *more* assistance when they do.

- **Increasing income or cutting back on expenses.** While not everyone can increase their income or cut back on expenses, many people can.

- **Struggling consumers may qualify for bankruptcy protection under federal law.** The most common causes of personal bankruptcy include medical expenses, job loss, and family instability. Yet, many consumers struggle for years to overcome insurmountable financial obstacles. Bankruptcy isn't for everyone, but Americans should consider making a "fresh start" bankruptcy before turning to predatory lenders.

IV. Under the Trump Administration, The CFPB is Turning Its Back on Protecting Consumers.

In the wake of the 2008 financial crisis and the Great Recession, Congress recognized the need for a regulator focused on consumer financial protection. Much of the CFPB's early regulatory work focused on the home mortgage lending market shattered by the foreclosure crisis. Nevertheless, the CFPB turned to payday loans, vehicle title loans, and similar forms of triple-digit interest rate lending early in 2012. Under the Dodd-Frank Act, Congress gave the CFPB the legal authority to identify and issue regulations to stop unfair, deceptive, or abusive acts or practices in consumer finance markets. However, as a political compromise, Congress also did not authorize the Bureau to adopt a traditional usury limit capping interest rates. Based on this authority, the Bureau began a four-year process of studying, taking public comments, and consultation with small business, federal and state regulators, a consumer advisory board, industry trade associations, and leaders in the banking, credit union, and small dollar lending industries.

After years of careful study, debate, public notice, and comments, in 2017 the Bureau issued a final regulation in designed to limit some of the worst practices in the high cost lending market. The

CFPB's regulation is designed to temper some of the worst consequences of some types of triple digit interest rate payday and vehicle title loans. In particular, the CFPB adopted a regulation that requires lenders to determine whether borrowers have the ability to repay their debts without defaulting on other preexisting obligations including minimum necessary living expenses. The regulation is currently set to require compliance in August of 2019.

However, it now appears this regulation is unlikely to provide protection to American consumers. Under the leadership of Trump Administration appointees, the CFPB has announced its intentions to revisit the payday lending regulation. Recently the CFPB issued new proposed regulations that would delay the August 2019 compliance date and repeal the core "ability to repay" consumer protection in the Bureau's own rule. Sadly, the Bureau's cost-benefit analysis projects that for payday lenders "not having to comply with the requirements in the 2017 Final Rule would translate to an increase in their annual revenues of approximately $3.4 billion to $3.6 billion."[42] And for vehicle title lenders, "the proposed elimination of the Mandatory Underwriting Provisions of the 2017 Final Rule would translate into an increase in annual revenues for these lenders of approximately $3.9 billion to $4.1 billion."[43] By the Bureau's own analysis without government intervention, payday and vehicle title lending will drain approximately eight billion dollars per year from precisely those struggling borrowers that objectively cannot afford their loans. Congress should pressure the CFPB to allow the current ability-to-repay standards to go into effect.

V. Congress Can Do Better: Expand the Military Lending Act's 36% Usury Limit to Protect All Americans.

The effects of the CFPB's withdrawal from actively protecting consumers in high cost lending will not affect all Americans in the same way. Currently over a dozen states have retained or reestablished traditional usury laws that prohibit triple-digit interest rate lending. These states include red and blue states, northern and southern states, as well as eastern and western states. New York, Vermont, Connecticut, North Carolina, Arkansas, South Dakota, Montana, and Colorado all have traditional interest rate limits of no more than 36 percent APR that effectively prohibit abusive payday lending. For residents of these states, the Trump Administration's expected retreat from payday lending regulation will have minimal effect because either through ballot measures or the leadership of state legislators, consumers are protected under state law. Residents of these states are thriving without access to payday and vehicle title loans.

Moreover, the political leaders who helped protect consumers are in these states are revered by their voters for taking a stand against predatory lending. Virtually every poll conducted on the subject indicates that an overwhelming majority of Americans—about three out of four—support

[42] 84 Fed. Reg. 5452, 4287 (February 14, 2019).
[43] *Id.*

traditional usury law that would prohibit triple-digit interest rate loans.[44] And in every public ballot referendum ever conducted on the issue, Americans have overwhelmingly voted in favor of traditional usury limits on the interest rates of consumer loans.[45] The members of this committee

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[44]*See* Center for Responsible Lending, *Congress Should Cap Interest Rates: Survey Confirms Public Support for Cracking Down on High-Cost Lending* (Mar. 2009), *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/congress/interest-rate-survey.pdf ("Three out of four Americans who expressed an opinion think that Congress should cap interest rates at some level. 72% think that the annual interest rate cap should be no higher than 36% annually."). "Only one quarter of those who expressed an opinion think Congress should not cap interest rates at all." *Id.* The telephone survey reached 1,004 adults in the continental United States. *Id.* CRL weighted the sample by age, sex, geographic region, and race to suggest a 95% chance that the survey results are accurate within 2%. *Id.*. *See also* Holly Beaumont, *Capping Interest at 36% is Ethical, Just*, Albuquerque Journal, February22, 2015, ("A poll conducted by the Center for Responsible Lending Public Policy Poling in January shows that 86 percent of New Mexicans support interest caps of 36 percent or less."); Rudolph Bush, Statewide Survey Shows Broad Support for Payday Lending Reform, Dallas News City Hall Blog (June 21, 2012), http://cityhallblog.dallasnews.com/2012 /06/statewide-survey-shows-broad-support-for-payday-lending-reform.html/ (reporting that 79% of Texans polled favored capping interest rates on payday and auto title loans at 36% APR or less); Center for Policy Entrepreneurship, *Poll on Payday Lending Legislation* (Feb. 15, 2008), *available at* http://www.c-pe.org/download/PaydayLendingReform/PollPaydayLending.pdf (stating that a weighted sample of 500 Colorado voters found "74% of respondents are in favor of proposed legislation that will set a cap of 36% on the interest and fees that a company can charge for payday loans"); Tim Evans, Lawmakers Face Familiar Question: How Much is Too Much to Charge for Small, Short-term Loan? INDY STAR, January 14, 2018, https://www.indystar.com/story/news/2018/01/14/lawmakers-face-familiar-question-how-much-too-much-chart-smalfate-high-interest-short-term-loans-bac/1020203001/ (poll of 600 registered Indiana voters conducted by Bellwether Research and Consulting of Alexandria, Virginia finding "68 percent 'strongly favor' and another 20 percent 'somewhat favor' the 36 percent cap."); Timothy E. Goldsmith & Nathalie Martin, *Interest Rate Caps, State Legislation, and Public Opinion: Does the Law Reflect the Public's Desires?* 89 CHICAGO-KENT L. REV. 115, 127 (2014) (survey of New Mexicans finding "over 72% of participants felt that the closest approximation of the rate at which these loans should be capped was 25% or less."); Iowans for Payday Loan Reform: Iowa Poll Reveals Strong Bi-partisan Support for Payday Lending Reform, IowaPolitics.com (Jan. 26, 2011), http://www.iowapolitics.com/index.iml ?Article=224730 (reporting about 7 in 10 Iowans support capping payday loan interest rates); Kentucky Coalition for Responsible Lending, *Kentucky Voters Support a 36 Percent Rate on Payday Loans, Despite Database and Job Loss Threats* (2010), *available at* http://kyresponsiblelending.files.wordpress.com/2010/01/kcrl_polling_data_fact_sheet_2-7-11.pdf (stating that a survey of "[n]early 400 voters from 179 cities and towns across the Commonwealth" found "73% of voters across the Commonwealth support a 36% APR cap on payday loans"); Pascale Mondesir, AARP New Poll Shows Support for Payday Loan Cap, KSFY News, October 28, 2015 (South Dakota poll commissioned by AARP "showed that 77% of the participants agree that there needs to be a cap on payday loans, with a 64% percent strongly agreeing."); Public Affairs Research Council of Alabama, *Alabama Public Opinion Survey* at 19-20 (Summer 2018), http://parcalabama.org/wp-content/uploads/2018/09/PARCA-2018-Public-Opinion-Survey.pdf (finding 73.6 percent of Alabamians agree or strongly agree with the statement "[t]he Alabama legislature should pass legislation capping the maximum rates on payday loans at 36%."); Jennifer H. Sauer, Summary of AARP Poll of Texans Ag 45+: Opinions on Payday loan Rates and Legislation (January 2013), https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2013/Summary-of-AARP-Poll-of-Texans-Age-45-Plus-Opinions-on-Payday-Loan-Rates-and-Legislation-AARP.pdf (finding 79% of Texans aged 45 years-old or believed the highest annual percentage rates payday and auto-title loan businesses should be able to charge is 36% APR or less); R.I. Office of the Gen. Treasurer, Press Release, Coalition, Raimondo, Taveras Raise Awareness on Payday Lending Pitfalls (Apr. 17, 2012), http://www.ri.gov/press/view/16334 (reporting that 76% of Rhode Islanders polled support capping payday loan interest rates).

[45] Ballot measures on usury limits have occurred in Arizona, Montana, Ohio, South Dakota, and Colorado. The public voted overwhelmingly in favor of usury limits in all of these states. *See* Tom Jacobson, Op-ed., GREAT FALLS TRIB.

could earn the respect and admiration of many voters by restoring the simple, effective usury limits that Americans previously enjoyed throughout most of the twentieth century.

The federal Military Lending Act provides an excellent template for congress to establish a national usury limit. Rather than returning to the drawing board, Congress should consider simply expanding the Military Lending Act's usury limit as implemented in the Department of Defense's 2015 regulations to all Americans. Expanding the MLA has several political and legal advantages:

- **The MLA's usury limit is strategically targeted to stop the most problematic debt traps.** The MLA does not apply to home mortgage loans, vehicle purchase loans, or secured retail finance—avoiding political opposition from several important constituencies. And, although the MLA does apply to banks, the 2015 final rule is crafted in a way that these institutions can live with. While they may not support a 36% usury limit, most banks do not exceed this price anyway.
- **The MLA makes a reasonable compromise on credit cards and overdrafts.** Very few credit cards have historically charged a periodic interest rate of more than 36 percent. So, the MLA doe s not generally interfere with credit card rates. And the Department of Defense's MLA regulation restricts only unreasonable nonperiodic credit fees—effectively deferring to the CARD Act as the primary of source consumer protection for non-periodic fees in the card market. The 2015 MLA rule follows the lead of Regulation Z in treating nonperiodic courtesy overdraft fees as a separate issue. But overdraft lines of credit and Deposit Advance products (so called "bank payday loans") are subject to the Act's all-in usury limit. The result is a usury limit that, appropriately, cuts primarily into the product offerings of payday lenders, vehicle title lenders, and finance companies that rely on collections as a business model instead of authentic ability-to-repay underwriting.

(Great Falls, MT), Jan. 6, 2011 ("Ballot Initiative 164, which took effect Jan. 1, capped the annual interest rates on payday and car title loans at 36 percent . . . . The measure passed with 72 percent of the vote statewide. It won in every county and House district . . . ."); Marian McClure & Debbie McCune Davis, Op-ed., *Let's Make Sure the Sun Sets on Arizona Payday Loans*, ARIZONA REPUBLIC, Nov. 21, 2009, at B5 ("60 percent of Arizona voters soundly rejected 400 percent annual interest rates on payday loans, when 1.2 million Arizonans rejected the payday lenders' Proposition 200. The lenders spent more than $14 million trying to fool the people. The voters saw through their scam."); Editorial, *Ohio Voters Prove that a Good Idea Can Beat $22 Million*, AKRON BEACON J. (Ohio), Nov. 6, 2008 ("Voters handed the industry a deservedly humiliating defeat, rejecting one of the slickest and most misleading campaigns in the state this election season by a ratio of roughly 2-to-1. The defeat of the lenders is particularly gratifying, as their efforts carefully concealed the industry's goal to regain the license to charge excessive interest rates to borrowers desperate for quick loans."); Ballotpedia, South Dakota Payday Lending Initiative, Initiated Measure 21 (2016), https://ballotpedia.org/South_Dakota_Payday_Lending_Initiative,_Initiated_Measure_21_(2016) (reporting 75.58% voting "in favor of placing an interest rate cap of 36 percent on short-term loans."); Ballotpedia, Colorado Proposition 111, Limits on Payday loan Charges Initiative (2018), https://ballotpedia.org/Colorado_Proposition_111,_Limits_on_Payday_Loan_Charges_Initiative_(2018), (reporting 77.25% voting in favor of reducing "the loan costs on a payday loan to a maximum APR of 36 percent . . . . regardless of whether payday lenders have a physical location in the state, they may not offer higher cost loans via electronic or U.S. mail, the internet, or telemarketing.").

- **Expanding the MLA to all consumers would be easier for industry than crafting a new usury limit.** Although the MLA protects only a relatively small (but important) proportion of our population, it currently applies to *all* creditors that extend loans within its scope. Financial institutions have already revised their policies and procedures, redesigned their origination and servicing software, and trained their compliance staff on how to conduct business under the MLA. As time goes on, financial institutions will have an even better sense of how making MLA-compliant loans affects their business model, tactics, and bottom line. Congress should consider taking advantage of this expertise and sunk compliance costs. Expanding the MLA is a consumer protection benefit-to compliance cost ratio bargain.

In conclusion, thank you for work on behalf of Americans in working to resolve these complex and important national problems.